

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

**IMPLEMENTATION OF THE AFFORDABLE
CONNECTIVITY PROGRAM**

)
)
)
)

WC Docket No. 21-450

**COMMENTS OF
THE CITY OF BOSTON, MASSACHUSETTS, MONTGOMERY COUNTY,
MARYLAND, WASHINGTON, DC, AND THE TEXAS COALITION OF CITIES FOR
UTILITY ISSUES**

GERARD LAVERY LEDERER
BEST & KRIEGER LLP
1800 K Street N.W., Suite 725
Washington, DC 20006
Counsel for the Localities
Gerard.Lederer@BBKLaw.com

December 8, 2021

EXECUTIVE SUMMARY

The City of Boston, Massachusetts, Montgomery County, Maryland, Washington, DC and TCCFUI file these comments to celebrate the continuation of the Emergency Broadband Benefits (“EBB”) program, the nation’s largest digital broadband inclusion program, with the standing up of the Affordable Connection Program (“ACP”). Local Governments, however, offer a cautionary note. There appears to be a belief by many that the programmatic changes will not result in significant disruptions in the lives of those who can least afford such interruptions. Moreover, the transition from EBB to ACP will take place in the middle of the school year and at the onset of another possible wave of Covid. Local Governments request that the Commission exercise its own version of the Hippocratic Oath of ensuring first that it do no harm by automatically enrolling all EBB participants into ACP, and for at least the remainder of the school year, that USDA’s “Community Eligibility” program qualifications be retained.

Beyond this cautionary note, Local Governments repeat many of the same requests we made in prior Emergency Broadband Benefits and Emergency Connection Fund filings.

- The Commission should explore means to provide support to the sponsored connectivity programs local governments have stood up rather than force recipients of such programs to convert to a new program.
- The Commission should use opportunity of standing up ACP to require providers to offer meaningful connection speeds, especially upload speeds;
- The ACP should incorporate lessons learned in local government sponsored programs, including that the cost of service is not the only barrier to connecting the unconnected;
- The Commission must be sensitive not to exclude school aged eligible recipients who are homeless; and
- Local governments stand ready to partner with the FCC and Providers in bringing the ACP to the nation.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
II. CONTINUITY OF SUPPORT AND CAUTION MUST BE OUR GUIDES	2
A. Commission Must Be Sensitive to Timing of Transition in the Middle of the School Year and the Onset of Omicron.	4
B. While Benefits Will Be Reduced; Service and Subscriptions Need Not.....	4
C. Commission Should Clarify that EBB Application Form is Honored Until ACP Application Form is Released.	5
III. COMMISSION SHOULD LEVERAGE PROVIDER ELIGIBILITY TO MANAGE TRANSITION AND ROOT OUT FRAUD.....	7
A. Commission Must Act to Prevent Involuntary Co-Pay Requirements	7
IV. COMMUNITY ELIGIBILITY PROVISION SHOULD BE MAINTAINED AT LEAST FOR THE SCHOOL YEAR.....	7
V. EMBRACE BULK PURCHASERS AND SPONSORED SERVICES.....	9
VI. COMMISSION SHOULD USE OPPORTUNITY TO DEMAND SPEEDS FASTER THAN 25/3 BE OFFERED IN EXCHANGE FOR EBB/ACP FUNDS.....	11
A. The Need For Speed: Applications Being Employed, Number Of Users, And The Time Of Day.	14
B. Local Governments Request Commission Examine Ways to Pay Less for Speeds Less Than 25/3.....	15
VII. COMMISSION MUST BE SENSITIVE NOT TO EXCLUDE SCHOOL AGED FAMILIES AND LIBRARY PATRONS WHO ARE HOMELESS.....	16
VIII. THE ACP SHOULD INCORPORATE LESSONS LEARNED IN LOCAL GOVERNMENT SPONSORED PROGRAMS	16
A. Cost is Not the Only Barrier to Connecting the Unconnected.....	17
B. Lessons Learned.....	19
1. Social Security Number Should Not Be Required.....	19
2. Past Arrears Must Not Serve As a Bar to Enrollment	20
IX. EMPOWER LOCAL PARTNERS WITH BETTER DATA TO IDENTIFY AND ENROLL ELIGIBLE HOUSEHOLDS	20
A. Weekly Growth Numbers Should Be Available At Zip Level	21
B. Source of Verification Should Be Available at the Zip Level.....	21
C. Identify Status of a Household as New or Existing Subscriber and Type of Connection	21
X. CONCLUSION.....	22

I. INTRODUCTION

The City of Boston, Massachusetts,¹ Montgomery County Maryland,² Washington, DC³ and the Texas Coalition of Cities For Utility Issues⁴ (“Local Governments”) file these comments

¹ While Boston is one of the nation’s oldest municipalities, it is a community that seeks to be on the cutting edge of science, education and digital inclusion. Boston has many firsts to its credit: the nation’s first public park, first public or state school, and first subway system. In 1799, Boston established the first board of health and the first health department in the United States with Paul Revere named as the first health officer. Boston also celebrates what it believes is the first comprehensive digital inclusion program run by any municipality in the United States: *Tech Goes Home*. *Tech Goes Home* challenges deep digital inequity by empowering community members to access and use digital tools to overcome systemic barriers and advance lives. Simply put, *Tech Goes Home* makes available for those that qualify and complete our training program computers, internet access, and training. Boston’s goals are to ensure that students can do homework, adults can find jobs and manage finances, seniors can connect with loved ones, linguistic minorities can learn English remotely, and all can access telehealth. A copy of Tech Goes Home Annual Report can be visited online at https://47ab9e76-c79f-45c8-8473-ff7df2a7cd56.filesusr.com/ugd/f01914_2a3f84485cf94608bb8900b53fb40864.pdf.

² Montgomery County is proud of the efforts the community has made to ensure that none of our low income residents are left behind during the Covid pandemic. These efforts have taken three distinct paths: sponsored school connection programs, public private partnerships that leverage municipal broadband, and digital equity outreach and educational efforts. An array of the low cost Internet offerings available to low income families in Montgomery County can be found at <https://montgomerycountymd.gov/obp/digital-equity.html>.

³ Washington, DC has been an active participant in the earlier versions of this docket (Emergency Broadband Benefits Program and Emergency Connection Fund). The City’s primary efforts in addressing digital inclusion may be found at [Tech Together DC](#). This is a values-led partnership between the DC government, the non-profit community, academia, and the industry to bridge the digital divide in our community through access, training, and opportunity. In addition, since September 2020, the District has assisted DC residents meet their remote learning needs through [Internet for All](#). Internet for All seeks to connect up to 25,000 households with PK3-12th grade students who are enrolled at DC traditional and charter public schools. Families must be eligible for SNAP or TANF benefits. As exemplified by Exhibit B, DC’s input into these comments and the attachment are based on its direct experience with ISPs, Internet for All beneficiaries, and school officials.

⁴ The Texas Coalition of Cities For Utility Issues (“TCCFUI”) is a coalition of more than 50 Texas municipalities dedicated to protecting and supporting the interests of the citizens and cities of Texas with regard to utility issues. The Coalition is comprised of large municipalities and rural villages. TCCFUI monitors the activities of the United States Congress, the Texas Legislature, the Public Utility Commission of Texas, the Texas Railroad Commission, and the Federal Communications Commission on utility issues of importance to cities.

to thank the 117th Congress and President Biden for creating the Affordable Connection Program (“ACP”)⁵ and to submit these constructive comments and suggestions in response to the Public Notice released on November 18, 2021⁶ on how best to implement the transition from the Emergency Broadband Benefit Program (“EBB”)⁷ to the ACP.

II. CONTINUITY OF SUPPORT AND CAUTION MUST BE OUR GUIDES

First and foremost, the Commission must act to ensure the continuity of support to EBB/ACP households. It must appreciate that even the slightest changes in the program are real threats to the momentum the Commission is experiencing in EBB/ACP enrollment⁸ and the number of households that have come to rely upon the support. Local Governments fear that a change in the name of the program and the monthly subsidy being reduced by some forty percent (40%) do not fall into the category of slight changes. Local Governments therefore counsel that

⁵ Div. F, tit. V, § 60502(a)(2) of the Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (Infrastructure Act).

⁶ Public Notice, *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450 (November 18, 2021). (“Notice”).

⁷ The EBB Program was established in Section 904 of Division N – Additional Coronavirus Response and Relief, Title IX – Broadband Internet Access Service, in the Consolidated Appropriations Act. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(c) 134 Stat. 1182, 2134 (2020), available at (Consolidated Appropriations Act), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act). Because so many of the issues are similar to those raised, attached hereto as Exhibit 1 are the [Comments](#), [Reply Comments](#) and ex parte visits of [February 24, 2021](#), [April 21, 2021](#) made by Local Governments in the EBB docket.

⁸ See Horrigan, *Growth in Emergency Broadband Benefit Enrollment since June has been in Large Cities and Places with Low Broadband Adoption*, Benton Blog, (Nov. 18, 2021) available at <https://www.benton.org/blog/growth-emergency-broadband-benefit-enrollment-june-has-been-large-cities-and-places-low> See also USAC’s tracking system which reflects that EBB has grown from 1,514,636 households in its first week of full eligibility (May 23) to 8,343,733 households as of December 5 and that more than 200,000 new households have signed up for the program every week since midsummer. (<https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/>

the Commission moves cautiously and with the benefit of the doubt resolved in favor of continued service.

Local Governments are troubled that conventional wisdom in Washington appears to be that there are minimal implementation challenges facing the nation and beneficiaries in converting the EBB to the ACP. The trade press trumpets “the FCC is likely to face minimal implementation obstacles as it transitions from the \$3.1 billion emergency broadband benefit program to the \$14.2 billion affordable connectivity program.”⁹ Local Governments are not as confident.

We offer this advice because the Commission has demonstrated an appreciation for such community input. In the very article that trumpeted no hurdles ahead in the transition, an FCC spokeswoman offered a realistic outlook: “[W]e found with the EBB program, trusted community outreach partners are critical to building trust in new federally supported programs, and we plan to build on those lessons learned as we prepare for [ACP’s] launch....”¹⁰ As representatives of those trusted community outreach partners, Local Governments counsel that unless mandated by Congress, the Commission should refrain from making any changes in the program. If changes are necessary, Local Governments further suggest, that if and where possible, the Commission should postpone any changes until after the 2021-22 school year has been completed to avoid undue interruptions in service. We suggest June 30, 2022 as the target for maintaining the status quo to the extent the Act permits such a hold still posture.

⁹ Gabriella Novello, *Few Implementation Challenges Expected With EBB to ACP Transition*, Communications Daily (November 26, 2021.) at 3.(“*Comm. Daily*”)

¹⁰ *Id.* at 4.

A. Commission Must Be Sensitive to Timing of Transition in the Middle of the School Year and the Onset of Omicron.

Local Governments do not wish to state the obvious, but given the need to avoid any disruption in the conversion from EBB to ACP might cause, it would be naïve not to point out that the January 1 conversion, albeit at EBB rates for 60 days, falls not only in the middle of the academic year, but at what might be the start of another Covid wave.¹¹ For these additional reasons Local Governments would like to suggest that the Commission exercise caution in the program rollout to ensure that families that have come to rely upon EBB for school purposes do not lose that benefit.¹² Local Governments would suggest that the Commission delay all but congressionally mandated changes in the program through the academic year, and use schools and other trusted community partners during the winter and spring to bring awareness of the transition to recipients.

B. While Benefits Will Be Reduced; Service and Subscriptions Need Not

While the monthly subsidy for ACP recipients will be reduced to Thirty Dollars (\$30.00) from the Fifty Dollar (\$50.00) EBB level of support, the reduction need not result in a loss of subscribers, nor the services subscribers have been receiving. A market analysis reveals that even without the benefit of the guaranteed federal government payment of the ACP, at least one broadband provider is offering 100 Mbps in download speed and 10 Mbps in upload speed for

¹¹ See e.g. Dan Diamond, Lena Sun and Tyler Pager, *Biden pledges to fight new variant ‘with science and speed,’ as omicron cases multiply and winter outlook worsens*. Washington Post (Dec. 2, 2021) available at <https://www.washingtonpost.com/health/2021/12/02/biden-strategies-omicron-delta/>

¹² It should be noted that in addition to Omicron, the transition takes place in the snow season for much of the nation, and the concept of a snow day has changed dramatically with schools that employ online classes. See Maria Cramer, *Sorry, Kids. Snow Days Are Probably Over*, New York Times (Published Sept. 25, 2020, Updated Dec. 16, 2020) available at <https://www.nytimes.com/2020/09/25/us/snow-days-online-school.html>

the ACP qualified subsidy rate.¹³ Local Governments believe that such a speed and rate should be used as a benchmark against which to measure the offering of other ACP providers.¹⁴ The Commission should ensure that Providers are competing for the ACP subsidy and offering a competitive level of service.

C. Commission Should Clarify that EBB Application Form is Honored Until ACP Application Form is Released.

Local Governments are concerned that changes in the ACP application process, forms and eligibility criteria will take place just as the EBB program appears to be gaining momentum.¹⁵ As Benton research has shown, the greater percentages of growth in the EBB program have come in urban America, which we feel is a direct reflection of the program awareness campaigns that local governments nationwide are conducting across multiple platforms.

Boston is an example of a community providing multi-faceted support for EBB. In early August, the city's public access channel and cable office began airing a public service announcement to alert eligible Bostonians about the program and how to apply for EBB support.¹⁶ Throughout the initial months of rollout for EBB, Boston engaged over 60 community-

¹³ Many local governments have partnered with Comcast to bring Internet Essentials to our constituents. As of December 22, 2021, Internet Essentials will offer 50/10 for \$9.95 and Internet Essential Plus will offer speeds of 100/10 for \$29.95 a month.

¹⁴ Montgomery County, Maryland through its MoCoNet will offer ACP eligible parties 100/100 speeds. The County will supplement the Federal ACP subsidy with a state and local match to provide these speeds for \$45 per month. It is clear that \$30 per month can buy substantial speed.

¹⁵ According to USAC's tracking system, EBB has grown from 1,514,636 households in its first week of full eligibility (May 23) to 8,343,733 households as of December 5. A review of the charts at <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> reveal that more than 200,000 new households have signed up for the program every week since midsummer.

¹⁶ A copy of the Boston EBB PSA may be viewed at <http://guide.bnntv.org:8000/CablecastPublicSite/show/104923?channel=3> In addition to

based organizations and non-profit service agencies and churches to educate and engage and enroll their constituents, clients, and congregations in EBB.

From January through March of 2022, the City will partner with a larger number of community service agencies to engage over 350 volunteer tax preparers and financial coaches to conduct economic workshops and mentoring programs with the primary purpose to assist eligible Bostonians receiving the earned income tax credit (“EITC”). Because Boston has noticed that parties qualifying for the EITC are often also qualified for EBB and ACP programs, the City plans to include an EBB application in the information packets of these coaching sessions and to train the EITC counselors to share information about the program.

To date, it appears that 20,000 Boston households are receiving EBB support. Boston will meet with approximately 13,000 households in the EITC outreach program. While there is likely already some cross -over, it is imperative that Boston either have an ACP form, or be permitted to employ an existing EBB application. It would be a wonderful opportunity and benefit for eligible households if a city agency such as the Office of Financial Empowerment or one of its contracted providers could enroll these households at the time of the interview and forward the application electronically to the FCC/USAC once an electronic signature is received from the eligible household.

And while Boston is proud to share its experience and plans with the Commission to bring EBB/ACP to the attention of those that are eligible, Boston knows that it is not alone in these efforts. We hope that the Commission will arm us with the forms and tools we need to make ACP the success we all believe it can be.

broadcasting the PSA in Boston, the PSA’s creator, the Boston Neighborhood Network made the PSA available for personalizing by other public access stations across the nation.

III. COMMISSION SHOULD LEVERAGE PROVIDER ELIGIBILITY TO MANAGE TRANSITION AND ROOT OUT FRAUD.

Local Governments support the efforts of the Commission to root out fraud, waste and abuse, but pray that the Commission focus its attention on providers, and provider conduct, to both address abuse and ensure a smooth transition from EBB to ACP.

A. Commission Must Act to Prevent Involuntary Co-Pay Requirements

Local Governments are concerned that not only will many consumers be confused by the transition from a \$50 benefit to a \$30 benefit, worse, consumers could incur a bill for the difference in the subsidy levels.¹⁷ Local Governments call on the Commission to not only take steps to inform consumers of the change, but impose as an eligibility requirement on providers seeking an ACP payment, their agreement that the consumer knowingly and voluntarily accepted any co-payment requirement. Moreover, that the service being provided for the co-pay is consistent with marketplace rates.

IV. COMMUNITY ELIGIBILITY PROVISION SHOULD BE MAINTAINED AT LEAST FOR THE SCHOOL YEAR

Local Governments are very concerned that the Commission appears to be predisposed to eliminate the Community Eligibility Provision (CEP) as an eligibility criteria for participation in the ACP program.¹⁸ As understood by Local Governments, the CEP program was created by the Department of Agriculture to streamline eligibility for school lunch programs and Congress directed that the Commission use the program as an aid to demonstrate EBB/ACT eligibility.¹⁹

¹⁷ Local Governments join with parties such as Public Knowledge in raising this concern. *See Ex Parte* of Public Knowledge (filed Dec. 2., 2021) at 1.

¹⁸ Notice at 31.

¹⁹ The process as explained in the FCC Office of Inspector General memo provides; “The Consolidated Appropriations Act permits households with members who qualify for free and reduced-price school lunch or the school breakfast program to enroll in the EBB program. The

Local Governments understand the impetus behind this question given the recent Office of Inspector General’s November 22, 2021 Memorandum finding “EBB providers’ sales agents are enrolling households by falsely claiming a dependent child attends a CEP school during the eligibility verification process.”²⁰ The FCC asks whether it should ensure that every household is qualified, not just those qualified in bulk as part of the CEP.

Local Governments support efforts to reduce fraud, waste and abuse, but question whether jeopardizing the eligibility for households that Congress identified as eligible for support, and in the middle of a school year is warranted. We find that the proposed solution is especially unwarranted given the fraudulent activity complained of is being conducted by EBB providers²¹, not EBB recipients and the Commission has means by which to deter and punish continued abuse.

CEP allows high-poverty schools and school districts (CEP schools) to provide breakfast and lunch at no charge to all students, regardless of income status. The Food Research & Action Center (FRAC) maintains a nationwide list of CEP schools. Under current FCC program rules, if a dependent child of a household attends a CEP school on FRAC’s list, the household qualifies for EBB support” Memorandum, Office of Inspector General. *Advisory Regarding Fraudulent EBB Enrollments Based On USDA National School Lunch Program Community Eligibility Provision* (rel. Nov. 22, 2021) available at https://www.fcc.gov/sites/default/files/oig_advisory_cep_11222021.pdf (“Memorandum”)

²⁰ *Id.*

²¹ See Memorandum at 1 (“EBB providers’ sales agents are enrolling households by falsely claiming a dependent child attends a CEP school during the eligibility verification process.”) See also, *Carr Statement on IG's Report on Waste, Fraud, and Abuse* (rel. November 23, 2021) at 1 (“I am outraged by the abuse uncovered by the Inspector General. It shows what appears to be a fraudulent scheme *by broadband providers or their agents*—and it centers on providers receiving funds by falsely indicating that a household has a student that attends a qualifying low-income school.”)(emphasis added) Carr Statement available at <https://www.fcc.gov/document/carr-statement-igs-report-waste-fraud-and-abuse>

It should also be noted, based upon USAC provided information that less than 1% of all households eligible for EBB support were verified by means of the CEP.²² While fraud, waste

Total Enrolled EBB Program Subscribers by Method of Verification

Method of Verification*	Total Subscribers
Lifeline	3,707,580
National Verifier Application	1,824,637
Alternative Verification Process	1,582,257
Verified by School	6,438
Total	7,120,912

and abuse must be addressed at every opportunity, in this case we are talking about less than 1% of all applications, and that is assuming that all were done fraudulently. Forcing all CEP households to demonstrate independent verification

could result in grave harm to the programs credibility and momentum. And while ensuring that the Commission document that all qualify for the program, it was clear that Congress understood the vital need for the EBB to be established in an expedited fashion to serve school aged families. While the word emergency is no longer in the title of the program, it would be naïve to think we are in any less dire circumstance.

V. EMBRACE BULK PURCHASERS AND SPONSORED SERVICES

The Commission should permit bulk purchasers of broadband services such as schools, public housing and public interests to continue to make purchases for eligible households and allow those households to assign any credit to the bulk purchaser. Likewise, the Commission should embrace the practice of sponsored services.

For instance, Boston Public Schools hold a bulk purchase contract with Comcast Internet Essentials and manage the voucher process and family connection directly, while for new

²² Universal Service Administration Co., *Total Enrolled EBB Program Subscribers by Method of Verification*, available at <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/additional-ebb-program-data/> (last visited Dec. 7, 2021.)

immigrants, seniors and public housing residents, the City contracts with Tech Goes Home to be both the purchaser and the sponsor.

For students and residents without stable housing, both Boston Public Schools and the City hold emergency bulk contracts with multiple wireless carriers and distribute the hotspots and tablets directly to the recipients.

Bulk purchasing and sponsored services of broadband connections is the basis for tens, if not hundreds, of thousands of low-income households having broadband today. By permitting the eligible household to assign their discount credit to the purchasing agent, the Commission could piggyback on existing relationships and successes.²³ Not only would such an act by the Commission make the transition seamless, it would also allow the program to benefit from the reduced rates these bulk purchases have been able to negotiate. For instance, should the Commission authorize Tech Goes Home to obtain the ACP, the FCC could expand the reach of the program almost threefold, for the administrative expenses and delays are removed and the access price is one-third of the amount authorized by Congress.

Finally, the fact is that Congress already contemplated a role for bulk purchasers that are also eligibility proxies. Since Congress provided that such entities could serve to verify the eligibility of a household for the Emergency Broadband Benefit Program,²⁴ why would one

²³ See Comments of National Digital Inclusion Alliance (WC Docket 20-455) (rec. Jan 25, 2021); NDIA called on the Commission to take all reasonable steps to encourage providers to renegotiate local, COVID-era contracts for bulk purchases of internet service for low income K-12 families and other households in need. They explained the distinctions this way: “Referred to as sponsored agreements or single payer agreements, these contracts involve a community anchor institution (such as a city or school district) or a community-based organization agreeing to pay directly for hundreds, if not thousands of internet service accounts for a year or more, so that low-income constituents can afford to participate in distance learning, telemedicine, etc. in the absence of Federal assistance.”

²⁴ Consolidated Appropriations Act, 2021, H.R. 133, div. N, tit. IX § 904(b)(2).

assume that Congress would object to their assistance in rolling the program out or expanding the reach of the Benefit by taking advantage of the lower bulk purchase.²⁵

VI. COMMISSION SHOULD USE OPPORTUNITY TO DEMAND SPEEDS FASTER THAN 25/3 BE OFFERED IN EXCHANGE FOR EBB/ACP FUNDS

Local Governments have consistently challenged the Commission's current benchmark of 25 Mbps downstream and 3 Mbps upstream as the level of service entitled to federal support as the speed is insufficient to adequately support remote learning needs.²⁶ We reiterate our criticism here and offer what we believe are multiple Congressional and Administrative statements on the minimum level of service that is required for federal support.

NTIA's Promote Broadband Expansion²⁷ -- Congressionally established competitive broadband program that requires service speeds of no less than 100/20 Mbps for eligibility.

²⁵ The FCC should allow bulk eligibility partnerships with school districts, public housing authorities, tribes and similar entities. The EBB/ACP could support quick access to large populations of eligible participants by allowing public housing authorities, tribal, and other low-income housing and similar providers to either be considered as eligible providers or partner with other ISP's to 'turn-on' the internet service in every unit and then run contract management with the Housing Authority or other entity. This would remove all application barriers that often interfere with individual unit households registering for the program, it would support streamlined verification and eligibility tracking, it would limit the account management for ISPs, it would allow for housing authorities or other entities to centralize communications with tenants about the service and options as we transition from EBB to ACP. The FCC had a similar provision for other types of providers for Lifeline broadband, which was put on hold during the last Administration.

²⁶ See Reply Comments of Montgomery County, WC Docket No. 21-445, passim (rec. Feb 16, 2021) ("*Montgomery County Replies.*"); Los Angeles Unified School District Comments, WC Docket No. 21-31, at 3 (rec. Feb. 12, 2021) (*LAUSD Comments*) (See also Federal Communications Commission, *Broadband Speed Guide*, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Mar. 11, 2021) (reporting the recommended broadband speed for general student use and video conferencing).

²⁷ Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020) (Act).

NTIA's Tribal Broadband Connectivity Program²⁸ -- Congressionally established \$1 billion dollar program directed to tribal governments to be used for broadband deployment on tribal lands, as well as for telehealth, distance learning, broadband affordability and digital inclusion. In order to obtain support, the program requires service speeds of no less than 25/3 Mbps, but rewards applications that provide higher speeds. For instance 25/3 Mbps applications receive 3 points for networks delivering end-user speeds higher than 25/3 and below 100/20 receive 7 points. While networks delivering end-user speeds of 100 Mbps download and 20 Mbps upload will receive 9 points. And networks delivering end-user speeds of 1000 Mbps speeds will receive 10 points.²⁹

Coronavirus State Fiscal Recovery Fund³⁰ -- On March 11, 2021, the American Rescue Plan Act (ARPA)³¹ was signed into law by President Biden to amend Title VI of the Social Security Act³² to add sections 602 and 603 which established respectively the **Coronavirus State Fiscal Recovery Fund** and **Coronavirus Local Fiscal Recovery Fund**.³³ The **Coronavirus State and Local Fiscal Recovery Funds** provide funding directly to local governments and permit investments in broadband infrastructure. Congress required that such investment was only available if it was scalable to **100 Mbps symmetrical** for unserved or underserved areas.

²⁸ Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020) (Act).

²⁹ See <https://www.grants.gov/web/grants/view-opportunity.html?oppId=333684>

³⁰ American Rescue Plan Act of 2021 (ARPA) § 9901, Pub. L. No. 117-2, §§ 602, 603 codified at 42 U.S.C. § 802 *et seq.*

³¹ American Rescue Plan Act of 2021 (ARPA) § 9901, Pub. L. No. 117-2, codified at 42 U.S.C. § 802 *et seq.*

³² 42 U.S.C. 801 *et seq*

³³ §§ 602, 603 of the Act.

Sec. 60101 of the Infrastructure Investment and Jobs Act (Public Law No: 117-58) creates the Broadband Equity, Access, and Deployment Program. Congress appropriated \$42 billion for the program that will provide broadband deployment grants to the states. While NTIA will have to establish fuller program requirements, Congress mandated that any beneficiary of the funds must deploy broadband networks providing **100/20 Mbps service**.







Sec. 60401 of the Infrastructure Investment and Jobs Act (Public Law No: 117-58) creates the \$1 B Investing in Middle Mile Infrastructure program. And while NTIA is charged with developing metrics as to whether a project's middle-mile infrastructure is capable of supporting retail broadband service, Congress made clear that any infrastructure project that the federal government helps support must be capable of providing **symmetrical gigabit broadband service** to community anchor institutions.







SEC. 80401 of the Infrastructure Investment and Jobs Act (Public Law No: 117-58) provides that broadband facilities may now be financed with private activity bonds starting January 1, 2022 in areas lacking 25/3 Mbps service. But the facilities must be capable of **100/20 Mbps service** to be eligible for the federal support.

Local Governments believe that Congress has made it very clear that in order to benefit from federal broadband support, a service provider must be offering a meaningful speed. And while there may be areas where only a single provider will step up to provide ACP service, in those areas where competition exists, the Commission should follow the lead of its sister agencies and employ speed as a determining factor for eligibility.








A. The Need For Speed: Applications Being Employed, Number Of Users, And The Time Of Day.

Local Governments have shared with the Commission in the past research funded by Montgomery County on the typical speed needs of today's households. We incorporate that research by reference³⁴ and offer these easy to understand graphics that capture that research..

	PEAK BANDWIDTH UTILIZATION TYPICAL FAMILY OF FOUR (DAYTIME)	DOWNLOAD / UPLOAD
x1 	Telework Video Conferencing	1.5 Mbps / 1.5 Mbps
x2 	Telelearning Remote Classroom	3.0 Mbps / 3.0 Mbps
x1 	Streaming Music / Video	2.0 Mbps / 0.1 Mbps
x10 	Home Security (Ring, etc.) and other household smart devices (Alexa, Cortana, etc.)	0.3 Mbps / 2.0 Mbps
	TOTAL BANDWIDTH USE (rounded)	7 Mbps / 7 Mbps

	PEAK BANDWIDTH UTILIZATION TYPICAL FAMILY OF FOUR (EVENING)	DOWNLOAD / UPLOAD
x1 	Online Video Gaming	2.0 Mbps / 1.0 Mbps
x2 	Streaming Video Applications (Netflix, Prime, etc.)	10 Mbps / 0.2 Mbps
x3 	Surfing Internet	3 Mbps / 1.0 Mbps
x10 	Home Security (Ring, etc.) and other household smart devices (Alexa, Cortana, etc.)	0.3 Mbps / 2.0 Mbps
	TOTAL BANDWIDTH USE (rounded)	15 Mbps / 4 Mbps

³⁴ See Reply Comments of Montgomery County, WC Docket No. 21-445, passim (rec. Feb 16, 2021)

	PEAK BANDWIDTH UTILIZATION MULTI-GENERATIONAL FAMILY OF ELEVEN (EVENING)	DOWNLOAD / UPLOAD
x2 	Online Video Gaming	4.0 Mbps / 2.0 Mbps
x3 	Streaming Video Applications (Netflix, Prime, etc.)	15.0 Mbps / 0.3 Mbps
x3 	Surfing Internet	3.0 Mbps / 1.0 Mbps
x1 	Video Chat (Zoom, etc.)	1.5 Mbps / 1.5 Mbps
x10 	Home Security (Ring, etc.) and other household smart devices (Alexa, Cortana, etc.)	0.3 Mbps / 2.0 Mbps
	TOTAL BANDWIDTH USE (rounded)	24 Mbps / 7 Mbps

Local Governments believe that the FCC should employ a minimum upload speed 10 Mbps based upon research Montgomery County has conducted. Such a speed would provide capacity to support growth and continuation of telework and remote learning. It is not unreasonable to anticipate that lower income households will want to grow their use of remote learning for community college and technical training courses, participation in video community meetings, and expand participation in the digital economy. The Commission should take this opportunity to

review minimum broadband speeds and ensure that our subsidized broadband programs offer sufficient capacity to enable all households to equitably participate in the digital economy.

B. Local Governments Request Commission Examine Ways to Pay Less for Speeds Less Than 25/3

Local Governments recognize that the Act makes eligible any service that is faster than dial up. So we understand that the FCC may be limited in what it can do to establish minimum speeds, but Local Governments request that speed thresholds serve to prioritize competitive offerings, and that the Commission examine how it might seek to address lack of speed by limiting benefit sizes available to the provider. Moreover, we note that the Commission states in the Notice that devices must be sufficiently robust to support video platforms for distance learning. Local Governments believe that the identical test should be employed for the service

the device will be using. Local Governments would go further and call for the Commission to establish a speed of service that is sufficient to also support multiple, simultaneous video conferencing platforms for the benefit of households with more than two children in remote learning and caregivers/parents in remote work.

VII. COMMISSION MUST BE SENSITIVE NOT TO EXCLUDE SCHOOL AGED FAMILIES AND LIBRARY PATRONS WHO ARE HOMELESS.

Local Governments request that the Commission ensure that reliance on a “household” standard does not render ineligible those that might be in a family shelter, domestic violence shelter or other temporary shelter. Local Governments request that the Commission explore ways to serve those who traditionally are not providers’ customers, such as the homeless population. For instance, Local Governments request that the Commission ensure that homeless school aged families and library patrons, i.e. those that might be in a family shelter, domestic violence shelter or other temporary shelters have access to the benefits of the ACP. In expanding the reach of E-Rate through the EBB/ACP, consistent with Congressional directives, the Commission should be flexible to ensure that the subsidy is available to residents in such temporary housing. Creative thinking leads to solutions. For instance, Boston provides tablets to residents both in transitional housing and who are experiencing instability. The City appreciates that the lack of housing stability should not be exacerbated by reducing, if not eliminating, one’s access to broadband connectivity.

VIII. THE ACP SHOULD INCORPORATE LESSONS LEARNED IN LOCAL GOVERNMENT SPONSORED PROGRAMS

As the Commission transitions from the EBB program to ACP, Local Governments are primarily worried that any burdensome certification process or limited outreach program will

frustrate the goals of the program to bring or keep eligible parties online. We would remind the Commission of some of our earlier lessons shared.³⁵

A. Cost is Not the Only Barrier to Connecting the Unconnected

Local Governments, and our community partners, caution the Commission that it will be very challenging to connect the unconnected, even when cost is eliminated as a barrier. Challenges experienced in many of local government digital divide programs reveal the following barriers to rolling out bulk purchases and sponsored services: (1) inaccurate contact information/difficult to reach; and (2) lack of trust for ISPs (another reason that we encourage the Commission to look for local partners that have built up relationships with the population the ACP seeks to serve). It is unrealistic for the Commission to believe that ISPs alone can find and connect the unconnected.

As referenced above, we hope that the Commission will retain United States Department of Agriculture's ("USDA") Community Eligibility Provisions. A success of CEP can be found in the City of Chicago which documented in previous Local Government filings that through its Chicago Connected program, the City, Chicago Public Schools, Comcast, RCN, T-Mobile and 35 community-based organizations (CBOs),³⁶ conducted initial enrollment of participants by reaching out to eligible households of their students that otherwise qualify for:

³⁵ Comments of City of Los Angeles CA, City of Chicago IL, City of Portland OR, City of Boston MA, Texas Coalition of Cities For Utility Issues (WC Docket 20-455) (rec. Jan 25, 2021); Reply Comment of City of Los Angeles CA, City of Chicago IL, City of Portland OR, City of Boston MA, Texas Coalition of Cities For Utility Issues (WC Dkt 20-455) (rec. Feb 16, 2021).

³⁶ A list of the 35 community-based organizations that partnered with the Chicago Public Schools may be found at <https://cps.edu/chicagoconnected>.

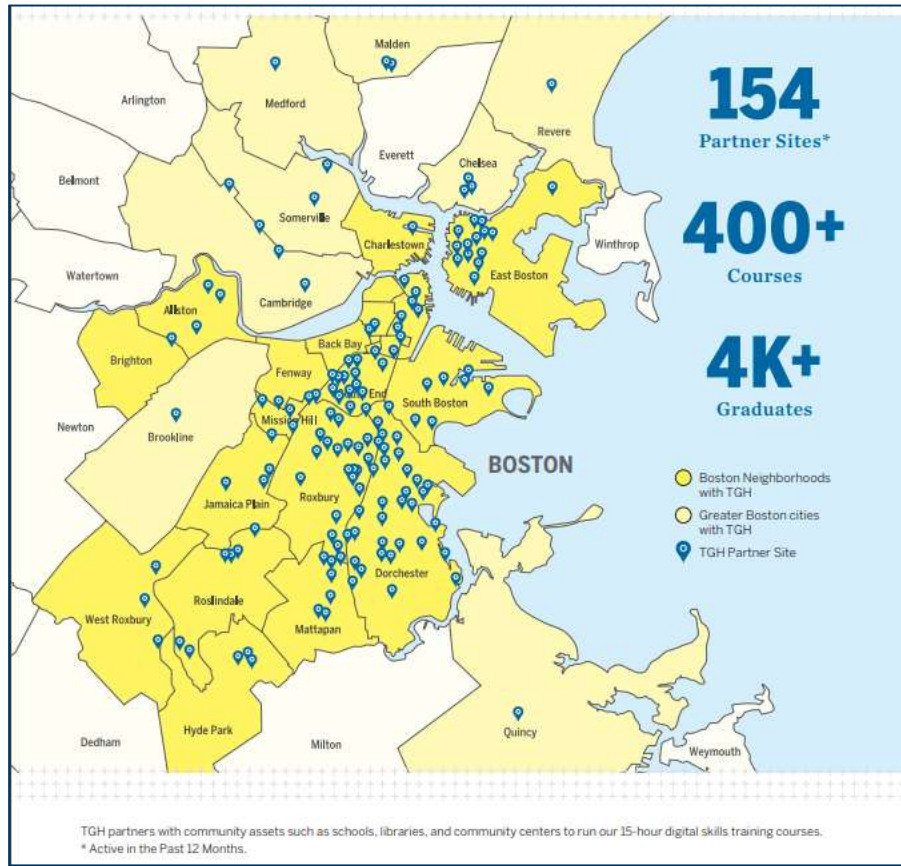
- Free and reduced price lunch;³⁷
- Medicaid qualifications;
- The Chicago Connected Community hardship index using a Hardship Index³⁸; or
- Are part of a special student populations such as diverse learners, English Learners and students in temporary living situations.³⁹

By conducting robust outreach with community partners, Chicago Connected was able to overcome the challenge of an eligible party being unaware of the program and their eligibility. Moreover, Local Governments have come to understand that the outreach program needs to involve community partners that have great credibility and existing relations with the targeted audience. For example, based on participant survey data and evaluation of Chicago Connected to date, the number one obstacle to program participation is successful outreach and clear, understandable program details that reach eligible families. The figure below from Boston's *Tech Goes Home*, provides a visual explanation of the level of outreach and partnering that such a program must have in order to bring benefits to the eligible community.

³⁷ Following initial enrollment efforts, Chicago Connected currently relies on free and reduced price lunch status to determine eligibility.

³⁸ For more information on the Hardship Index, please visit <https://greatcities.uic.edu/2019/12/13/fact-sheet-chicago-community-area-economic-hardship-index-2017/>.

³⁹ Chicago Connected has served as a model for other cities and school districts across the country, with more than 20 cities reaching out for more information on how the program is structured and operated. Notably, the City of Philadelphia recently announced a similar effort, PHLConnectED, to connect 35,000 of its students with internet services and devices. Chicago's Public Schools stands ready to share their experiences with the Commission as to just how important the group certification plays not only in Chicago Connected broadband program, but in bringing multiple benefits to Chicago households with school aged children.



B. Lessons Learned

1. Social Security Number Should Not Be Required

Many of our programs have found that complex applications and the fear that the lack of a social security number is fatal to even the simplest of applications: lessons that we hope the Commission will take into consideration.

Chicago Connected directly addresses the issue of a social security number in its FAQ section, as it has come to understand the assumed need for a social security numbers serves as a deterrent to many applying for the program:

Do I need a Social Security Number to sign up?

No. There are over 30 different forms of identification that can be provided to confirm a family's name and address, including a driver's license, a utility bill in the applicant's name, or a current employment badge / photo ID.⁴⁰

2. Past Arrears Must Not Serve As a Bar to Enrollment

In establishing EBB, Congress made clear that no participating providers may disqualify an otherwise eligible household because a “member of the household has any past or present arrearages with a broadband provider.”⁴¹ We would further hope that none of the potential providers of ACP use arrears as the basis to abstain from the program and the Commission examine its ability to make such a condition an eligibility factor.

IX. EMPOWER LOCAL PARTNERS WITH BETTER DATA TO IDENTIFY AND ENROLL ELIGIBLE HOUSEHOLDS

While Local Governments congratulate the Commission and USAC for the transparency they have brought to the program through the USAC's Program Tracker,⁴² we would request that the tracker offer the same granular analysis at the zip level that it offers at the national level. Because it is at the zip level that local partners can best identify efforts that are working in advertising EBB/ACP and tracking program enrollment. In an era with limited resources, it would allow the Commission, Providers and local partners with the ability to target educate eligible household regarding the program.

⁴⁰ See Comments of City of Los Angeles CA, City of Chicago IL, City of Portland OR, City of Boston MA, Texas Coalition of Cities For Utility Issues (WC Docket 20-455) (rec. Jan 25, 2021) at Exhibit A.(Chicago Connected Fact Sheet)

⁴¹ Consolidated Appropriations Act, 2021, H.R. 133, div. N, tit. IX § 904(a)(6).

⁴² <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/>

A. Weekly Growth Numbers Should Be Available At Zip Level

The USAC tracker provides the researcher with growth at the national level on a weekly basis. This is a very helpful tool. Still, it would be more helpful if such a weekly analysis was available at the Zip level. Such data would alert local partners as to increases in enrollment in any given week and allow those local partners to examine what programs might have been employed in that time period that resulted in the productivity. In much the same way, such a weekly analysis would show local partners what programs were not as successful.

B. Source of Verification Should Be Available at the Zip Level

The USAC tracker reveals what verification form was employed in establishing eligibility on a national level, but not at the Zip level. Local Governments believe that making such information available at the Zip level would help ensure that programs that are not identifying and assisting in registering households are aware of the EBB/ACP.

C. Identify Status of a Household as New or Existing Subscriber and Type of Connection

Local Governments have been employing research to determine the number of homes in their area by financial category that are not on-line. It is vital to know how many new households EBB/ACP are bringing on line. as opposed to the very laudatory goal of keeping households on line. We would welcome USAC and the Commission's efforts to track this metric and the national and zip level.

For example, in Montgomery County Maryland, an analysis of the 2019 U.S. Census American Communities Survey data shows that 28,325 County households earning less than \$50,000 do not have wireline broadband at home (36%). As of December 4, 2021, USAC reports that 7,245 Montgomery County households have enrolled in EBB. But it is unknown

whether these EBB enrollees are current broadband subscribers receiving a needed subsidy, or has the number of households without broadband in Montgomery County been reduced.

Finally, it would be helpful to know at the County level how EBB subscribers are being connected, i.e. mobile versus fixed broadband versus satellites. USAC collects that information at the national level, but does not make available at the County level.

X. CONCLUSION

Congress and the FCC are to be applauded for acknowledging, funding and extending the life of programs such as EBB/ACP to close the digital divide. These efforts will be more successful if the Commission:

- First does no harm as it transitions from EBB to ACP,
- Adopts and incorporates the lessons and insights that Local Governments⁴³ and our community partners have sought to share in these comments;
- Explores means to adopt local sponsored digital inclusion programs;
- Employs transition to ACP to obtain faster speeds for eligible households;
- Provide better tools to local partners to identify and assist in the registration of eligible households; and
- Accepts local governments' offers of assistance to reach the unconnected.

Respectfully submitted,

/s/ Gerard Lavery Lederer

Gerard Lavery Lederer
BEST & KRIEGER LLP
(202) 370-5304; Cell: (202) 664-4621
1800 K Street N.W., Suite 725
Washington, DC 20006
Counsel for the Local Governments

December 8, 2021

51348.00001\34603062.2

⁴³ In addition to our ideas, local governments also bring a credibility to this project. A recent Gallup poll from August-September 2020, found that local governments are the most trusted of government entities included in the poll, with 71 percent of Americans saying they trust it a great deal or fair amount (<https://news.gallup.com/poll/321119/trust-federal-government-competence-remains-low.aspx>) (site last visited Dec. 8, 2021).